

HOUSE BILL NO. 309

INTRODUCED BY T. HENRY

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A PUBLIC HEALTH NURSING SERVICE FOR FOSTER CHILDREN; ESTABLISHING A FOSTER CHILD HEALTH CARE MANAGEMENT RECORD; APPROPRIATING FUNDS; AMENDING SECTIONS 50-16-529, 52-2-112, 52-2-602, AND 52-2-603, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Public health nursing service for foster children -- purposes -- provisions -- department duties. (1) The department shall establish and administer a public health nursing service for foster children to ensure that foster children have access to and continuity in medical, dental, and mental health care. The service is intended to serve children who are placed in a youth care facility pursuant to Title 41, chapter 3.

(2) The department shall contract with local public health agencies as defined in 50-1-101 to provide the services allowed under this section. For each foster child covered by the program, the contracting local public health agency shall:

(a) ensure that the child has a primary care provider and a dentist who are chosen by the youth care facility in conjunction with the department and who are available to provide appropriate, timely, and necessary care through a coordinated system of care to meet the child's needs;

(b) provide a health assessment by a public health nurse that follows the state medicaid program's schedule for the early and periodic screening, diagnosis, and treatment services provided for in 53-6-101;

(c) work with the child's youth care facility to ensure that the child keeps medical, dental, and mental health appointments;

(d) collect, compile, interpret, and summarize health information for the foster child health care management record provided for in [section 2];

(e) provide health education to the foster care facility and foster child;

(f) review the status of the child's immunizations;

(g) review with the youth care facility the child's current medications; and

(h) develop and keep current a health plan for the child, including development of a plan for a child who will leave the foster care system because the child is 19 years of age or an emancipated minor as defined in 41-1-401.

(3) The local public health agency shall collect and maintain medical, dental, mental health, and school health information for each foster child and provide a summary of the information to:

(a) the department, for the foster child health care management record provided for in [section 2];

(b) the youth care facility in which the child is placed; and

(c) a foster care review committee for foster care reviews as provided for in 41-3-115.

(4) The selection of a primary care provider and dentist pursuant to this section must take into consideration the need for the child's medical and dental care to be accessible, continuous, and culturally appropriate.

(5) The department shall:

(a) make a payment of \$500 a year to a local public health agency for each foster child that the agency serves under this section; and

(b) designate an appropriate bureau or section within the public health and safety division to provide:

(i) oversight, monitoring, and evaluation of the public health nursing service for foster children; and

(ii) technical assistance to local public health agencies, including tribal health departments.

(6) Information provided under this section is health care information as defined in 50-16-504 and is subject to the privacy provisions of Title 50, chapter 16.

NEW SECTION. Section 2. Foster child health care management record. (1) Based on information provided by a local public health agency pursuant to [section 1], the department shall create and maintain a health care management record for each foster child within 30 days of the child being placed in the state's custody pursuant to Title 41, chapter 3. The health care management record must include but is not limited to:

(a) the name of the primary care provider and the dentist selected for each child;

(b) a record of each visit the child makes to a health care provider, including well-child visits;

(c) a record of each immunization the child receives;

(d) a list of the child's known health problems and allergies;

(e) information on all medications prescribed to the child in enough detail to permit the refill of prescriptions, including a description of the disease or medical condition that the medication treats;

(f) health summaries provided by a local public health agency pursuant to [section 1]; and

(g) any other available health history that health care providers who have cared for the child determine should be included in the record.

(2) (a) The health care management record must be part of the department's record for the child as long as the child remains in foster care.

(b) The department shall provide a foster child's health care management record to each youth care facility in which the child is placed.

(3) (a) The department shall provide training or instructional materials to youth care facilities, health care providers, and other individuals as appropriate in the use of the foster child health care management record.

(b) A youth care facility that receives information about a child or a child's family pursuant to this section shall keep the information confidential and may not further disclose or disseminate the information, except as authorized by law.

(c) A health care provider is not liable for any unauthorized disclosures of health information by the department, a local public health agency, or a youth care facility.

(4) The department shall provide the health care management record to the following individuals when a child is no longer in the state's custody pursuant to Title 41, chapter 3:

(a) the child's parent, legal guardian, or managing conservator; or

(b) the child, if the child is at least 18 years of age or has otherwise become an emancipated minor as defined in 41-1-401.

Section 3. Section 50-16-529, MCA, is amended to read:

"50-16-529. Disclosure without patient's authorization based on need to know. A health care provider may disclose health care information about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is:

(1) to a person who is providing health care to the patient;

(2) made for any of the following purposes and the health care provider reasonably believes the recipient will not use or disclose the health care information for any other purpose and will take appropriate steps to protect the health care information:

(a) to any other person who requires health care information for health care education;

(b) to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial

services to the health care provider;

(c) for assisting the health care provider in the delivery of health care;

(d) to allow a local public health agency to manage health care and health care information for foster children pursuant to [sections 1 and 2]; or

(e) to a third-party health care payor who requires health care information and if the health care provider reasonably believes that the person will:

~~—— (a) not use or disclose the health care information for any other purpose; and~~

~~—— (b) take appropriate steps to protect the health care information;~~

(3) to any other health care provider who has previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider not to make the disclosure;

(4) to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with the laws of the state and good medical or other professional practice, unless the patient has instructed the health care provider not to make the disclosure;

(5) to a health care provider who is the successor in interest to the health care provider maintaining the health care information;

(6) for use in a research project that an institutional review board has determined:

(a) is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(b) is impracticable without the use or disclosure of the health care information in individually identifiable form;

(c) contains reasonable safeguards to protect the information from improper disclosure;

(d) contains reasonable safeguards to protect against directly or indirectly identifying any patient in any report of the research project; and

(e) contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(7) to a person who obtains information for purposes of an audit, if that person agrees in writing to:

(a) remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(b) not disclose the information further, except to accomplish the audit or to report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient or other unlawful conduct by a health care provider;

(8) to an official of a penal or other custodial institution in which the patient is detained; and

(9) to any contact, as defined in 50-16-1003, if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the contact or any other individual."

Section 4. Section 52-2-112, MCA, is amended to read:

"52-2-112. Duty to strengthen child welfare services. (1) The department shall make provision for establishing and strengthening child welfare services, including protective services, and for care of children in registered or licensed family foster homes, child-care agencies, group homes, or treatment facilities. Payment provided under this section is made under the provisions of 41-3-115 and 52-2-611.

(2) In recognition of the fact that children in need of child welfare services often experience changes in their living situations as well as high rates of acute and chronic medical, dental, and mental health problems and thus would benefit from continuity in health care services, the department shall ensure that a child's physical, dental, and mental health needs are identified and addressed in a timely manner."

Section 5. Section 52-2-602, MCA, is amended to read:

"52-2-602. Definitions. For the purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Foster child" means a person under 18 years of age who has been placed by the department in a youth care facility.

(4) "Kinship foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the kinship parent's own children, stepchildren, or wards. The substitute care may be provided by any of the following:

(a) a member of the child's extended family;

(b) a member of the child's or family's tribe;

(c) the child's godparents;

1 (d) the child's stepparents; or

2 (e) a person to whom the child, child's parents, or family ascribe a family relationship and with whom the
3 child has had a significant emotional tie that existed prior to the department's involvement with the child or family.

4 (5) "Person" means any individual, partnership, voluntary association, or corporation.

5 (6) "Primary care provider" means a physician, physician assistant, or advanced practice registered
6 nurse licensed under Title 37 who provides a patient with a broad spectrum of preventive and curative health care
7 services over a long period of time and who coordinates all of the care a patient receives.

8 ~~(6)(7)~~ "Respite care" means the provision of temporary, short-term supervision or care of a foster child,
9 in an emergency or on an intermittent basis, to provide foster parents relief from the daily care requirements of
10 a foster child whose mental or physical condition requires special or intensive supervision or care. Respite care
11 includes but is not limited to homemaker services, child care, and emergency care either in the home or out of
12 the home.

13 ~~(7)(8)~~ "Respite care provider" means a person who meets the qualifications and requirements
14 established by the department to provide respite care under 52-2-627.

15 ~~(8)(9)~~ "Substitute care" means full-time care of a youth in a residential setting who is placed by the
16 department, another state agency, or a licensed child-placing agency. Individuals who provide care to youth who
17 are recipients of services provided through the department's developmental disabilities, mental health, or
18 medicaid home- and community-based services waiver program are also considered to be providing substitute
19 care. This part does not apply when a person accepts the care and custody of a child on a temporary basis as
20 an accommodation for the parent or parents, guardian, or relative of the child.

21 ~~(9)(10)~~ "Transitional living program" means a program with the goal of self-sufficiency in which
22 supervision of the living arrangement is provided for a youth who is 16 years of age or older and under 21 years
23 of age.

24 ~~(10)(11)~~ "Youth assessment center" has the meaning provided in 41-5-103.

25 ~~(11)(12)~~ "Youth care facility" means a facility that is licensed by the department or by the appropriate
26 licensing authority in another state and in which facility substitute care is provided to youth. The term includes
27 youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child-care agencies,
28 transitional living programs, and youth assessment centers.

29 ~~(12)(13)~~ "Youth foster home" means a youth care facility in which substitute care is provided to one to
30 six children or youth other than the foster parents' own children, stepchildren, or wards.

(13)(14) "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth.

(14)(15) "Youth shelter care facility" means a youth care facility that regularly receives children under temporary conditions until the court, probation office, department, or other appropriate social services agency has made other provisions for the children's care."

Section 6. Section 52-2-603, MCA, is amended to read:

"52-2-603. Powers and duties of department. (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child-care agencies, and transitional living programs for youth in need of care, as defined in 41-3-102;

(b) exercise licensing authority over all youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child-care agencies, transitional living programs, and youth assessment centers;

(c) collect and disseminate information relating to youth in need of care, including but not limited to the health care management record provided for in [section 2];

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the number of youth in need of care in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements;

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of intervention, and indigent delinquent youths who require treatment; and

(h) provide reimbursement for mental health outpatient counseling services for persons who experience the death of a foster child while providing substitute care to the foster child in a youth care facility.

1 (2) The department may:

2 (a) enter into contracts with nonprofit corporations or associations or private organizations to provide
3 substitute care for youth in need of care in youth care facilities;

4 (b) accept gifts, grants, and donations of money and property from public and private sources to initiate
5 and maintain community-based services to youth;

6 (c) adopt rules to carry out the administration and purposes of this part.

7 (3) The department shall pay for room, board, clothing, personal needs, and transportation in youth foster
8 care homes and youth group homes for youth who are in the physical or legal custody of the department and who
9 need to be placed in the facilities. Payments for the clothing of a youth placed in a youth foster home must be
10 provided to the extent that the youth needs a basic wardrobe or has a special clothing need. Upon approval by
11 the department, payments under this subsection may continue for a youth up to 21 years of age who remains in
12 substitute care. Payments under this subsection may not exceed appropriations for the purposes of this
13 subsection.

14 (4) The department may provide a subsidy for a guardianship of a child who is in the department's legal
15 custody if the guardianship has been approved by the department pursuant to 41-3-444 and in accordance with
16 eligibility criteria established by department rule."

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18 **NEW SECTION. Section 7. Appropriation.** There is appropriated \$775,000 from the general fund to
19 the department of public health and human services in each year of the 2011 biennium to be used for the
20 purposes of [sections 1 and 2].

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22 **NEW SECTION. Section 8. Codification instruction.** [Sections 1 and 2] are intended to be codified
23 as an integral part of Title 52, chapter 2, part 6, and the provisions of Title 52, chapter 2, apply to [sections 1 and
24 2].

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26 **NEW SECTION. Section 9. Effective date.** [This act] is effective July 1, 2009.

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